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3 **So Ordered.**



Patricia C. Williams
Patricia C. Williams
Bankruptcy Judge

4 **Dated: November 19th, 2012**

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7
8 UNITED STATES BANKRUPTCY COURT
9 EASTERN DISTRICT OF WASHINGTON

10 In re:

11 LLS AMERICA, LLC,

12 Debtor.

No. 09-06194-PCW11

13 _____
14 BRUCE P. KRIEGMAN, solely in
15 his capacity as court-appointed
Chapter 11 Trustee for LLS America,
LLC,

16 Plaintiff,

Adv. No. 11-80295-PCW

17 vs.

18 1418490 ONTARIO, LTD., et al.,

19 _____
20 Defendants.

MEMORANDUM DECISION RE:
DEFENDANT 558778 BC, LTD.'S
MOTION TO DISMISS (ECF No. 104)

21 This adversary is one of hundreds commenced by the trustee of the LLS America,
22 LLC ("LLS America") bankruptcy estate which adversaries seek to recover money paid
23 by the debtor to certain lenders or investors as part of an alleged Ponzi scheme
24 conducted by the debtor. Defendant 558778 BC, Ltd., filed a motion to dismiss on
25 December 16, 2011, ECF No. 104.

26 In a similar adversary, *Kriegman v. Cooper*, No. 11-80093-PCW, a written
27 decision was entered on July 2, 2012, ECF No. 146, regarding similar motions to dismiss
28 and an oral decision was rendered on May 24, 2012, ECF No. 118, on the issue of

MEMORANDUM DECISION RE: . . . - Page 1

1 pleading fraud with particularity (“Previous Decision”). The issues regarding dismissal
2 raised in the subject motion are the same as those raised in the Previous Decision. Many
3 of the facts in the Previous Decision are relevant to the subject motion.

4 By supplemental affidavit of Curtis Frye (ECF No. 203), the trustee presented
5 evidence in this case that the defendant 558778 BC, Ltd., loaned or invested an unknown
6 amount with either none or an unknown number of promissory notes issued. In 12
7 distributions occurring from March 2004 to February 2005, the defendant received
8 \$12,000 (CAN). By declaration (ECF No. 111), Goeffrey Toews, on behalf of defendant
9 558778 BC, Ltd., presented evidence that it was formed under the laws of Canada, does
10 not operate a business in the United States, and to the extend defendant received any
11 promissory notes, those promissory notes listed Canadian entities as borrowers with
12 distributions primarily made from Canadian entities. The declaration further states that
13 the loans or investments were solicited in Canada, but no details were provided
14 regarding the manner of solicitation.

15 The grounds for dismissal in the subject motion are: (1) ineffective service of
16 process; (2) improper extraterritorial application of United States bankruptcy law; and
17 (3) failure to state the alleged fraud with particularity as required by Fed. R. Civ. P.
18 (9)(b). The reasoning regarding the denial of dismissal based on those grounds is set
19 forth in the Previous Decision and applicable to the subject motion.

20 As in the Previous Decision, one basis for the request to dismiss is the lack of
21 personal jurisdiction. Unlike the situation in the Previous Decision, this defendant did
22 not file a proof of claim in the underlying bankruptcy case of LLS America. Nor did the
23 defendant file a motion to withdraw reference of this adversary to the District Court for
24 Eastern District of Washington.

25 The defendant filing the subject motion had sufficient minimum contacts to
26 establish personal jurisdiction. Many of those facts in the Previous Decision are
27 applicable to the defendant in this case. The defendant made loans to or invested in
28 debtor, and the entities composing the consolidated debtor were managed and operated

1 in Spokane, Washington. This adversary complaint alleges that the defendant knew or
2 should have known it was participating in a Ponzi scheme. Unlike the defendants in the
3 Previous Decision, this defendant did not receive commissions, i.e., compensation for
4 soliciting or locating other investors or lenders. However, the economic activity in which
5 the defendant engaged in was sufficient to establish minimum contacts for personal
6 jurisdiction. For these reasons, the motion to dismiss is **DENIED**. Counsel for the
7 defendant shall submit an order consistent with this decision.

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9 ///END OF MEMORANDUM DECISION///
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